



APR - 6 2015

**MEMORANDUM**

**SUBJECT:** EPA Comments on "Quick Reaction Report: Required Inspections of Pesticide Manufacturers and Importers in North Dakota Must be Resumed to Comply with Law and Protect the Public and Environment"

**FROM:** Cynthia Giles, Assistant Administrator  
Office of Enforcement and Compliance Assurance

Shaun L. McGrath, Regional Administrator  
EPA Region 8

**TO:** Arthur A. Elkins Jr, Inspector General  
Office of Inspector General

EPA's Office of Enforcement and Compliance Assurance (OECA) and Region 8 have elected to provide a written response to the above-mentioned final report. We understand our final response will be posted on the Office of Inspector General (OIG) public website. We agree that the OIG evaluation of EPA's oversight of state implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) identified areas of concern and opportunities for improvement. We are committed to addressing the concerns raised in a timely manner. However, while OECA and Region 8 agree to the recommendations and have provided milestones and completion dates, we do not agree with all of the findings, conclusions, and characterizations contained in the report.

Specifically, we believe the OIG does not present substantive evidence from its evaluation to support a conclusion that "the failure to conduct inspections increases the risk that pesticides are not in compliance with federal law which could result in potential risks from toxics being undetected and adverse human health and environmental impacts occurring." This statement broadly implies an unsubstantiated direct relationship between the absence of an inspection and human health and environmental impacts.

The facts are that trained and experienced state inspectors from the North Dakota (ND) Department of Agriculture have routinely conducted producer establishment inspections (PEIs) within the state. The FIFRA program has and will continue to rely on state inspectors for most of the compliance monitoring work due to the large size of the regulated community. Regional reviews of work done by the ND Department of Agriculture under their Pesticides Enforcement Grant has demonstrated they have a very credible field presence.

EPA does require states with Pesticide Enforcement Grants to maintain at least one inspector with federal credentials so that those inspectors may inspect facilities on EPA's behalf. For federal only programs (not delegated or authorized) like the FIFRA imports program, this allows EPA to extend the number of inspectors in the field that are authorized to inspect under federal requirements. We agree that North Dakota should replace the federally credentialed inspector that retired.

EPA also agrees that a state inspection that is not conducted utilizing federal credentials does not replace a federal inspection in federal only programs or in programs where state requirements may be different than that of the federal program. However, we do not agree that for establishment inspections in North Dakota, the lack of a federal inspection equates to facility noncompliance or that there has been no monitoring of the compliance status of these facilities. The state has conducted 680 PEI inspections during the time period in question in the OIG report. Further, there is no quantifiable information to make the determination that the lack of a federal inspection means that these facilities are out of compliance.

It should be noted, the OIG report does not present a complete picture of pesticides oversight and inspection activity conducted in the state of ND. The OIG report generally presents worst-case scenarios and the EPA will continue to work with the state to ensure compliance with federal regulations and protect human health and the environment from risks associated with pesticides. However, not all exposures to pesticides should be characterized as "exposure to unsafe pesticides" or categorically endangering the public.

Page 2 of the report includes a section on "Significant Long-Standing Lapses in EPA Region 8 FIFRA Producer Establishment and Import Inspections in North Dakota." The report states "approximately 1,300 pesticide imports to the U.S. have come through ND and none has been inspected." However, the report does not clearly communicate that when importing pesticides or devices to the U.S., the importer must submit to the appropriate EPA Regional Offices an EPA Form 3540-1 Notice of Arrival (NOA) of Pesticides and Devices. EPA Regional Office staff routinely review and verify the shipment information and make a determination on the acceptability of the product to be allowed entry into U.S. territory. EPA signs and returns the NOA form to the importer. Upon arrival of a shipment of pesticides or devices, the importer must present the completed NOA form, showing acceptance by EPA, to the Customs and Border Protection Agent at the port of entry. Products without EPA's clearance on the NOA are not allowed to enter into US commerce.

Previously, Region 8 communicated to the OIG that, in ND, EPA deals primarily with a small universe of shippers who bring registered products into the U.S. Approximately 50% of the shipments come from one company, and 37% of the shipments are the same product. Region 8 followed the FIFRA program's inspection manual guidelines and used the NOAs to determine that, in their judgement, an inspection was not warranted. The OIG statement that the lack of FIFRA import inspections pose a "potential risk not only for residents in ND but residents in other states and locations in the United States" is a gross overstatement that is not supported by the findings of this report.

OECA and Region 8 are concerned that the OIG unfairly characterized ND as not having a federal-credentialed state inspector since 2013. Previously, Region 8 asked that the OIG make note that since that inspector retirement on November 27, 2013, ND attempted in good faith to initiate the process to obtain Federal credentials for another employee who subsequently resigned before credentials could be obtained. State, tribal, and EPA inspectors holding federal credentials must complete specific types of training to ensure compliance with EPA Order 3500.1, Media Specific Training Requirements, as well as emerging topics that create the need for additional specific training. EPA Order 3500.1 also has specific requirements for supervisors of state inspectors, and EPA Order 1440.2 has requirements for health and safety training for inspectors, before they can use federal credentials. It should be noted, ND is in the process of obtaining federal credentials for two state employees, and ND agreed to conduct import inspections at EPA's request using federal credentials.

OECA and Region 8 both share your goal of improving FIFRA inspections and oversight. We will continue to work to identify additional opportunities for improvement regarding inspections under FIFRA within the Region and the state of ND. If you have any questions concerning this response, please feel free to contact Gwendolyn Spriggs, the OECA Audit Liaison, at 202-564-2439.

cc: Gwendolyn Spriggs  
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